

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Offic**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/497,822 02/03/00 FRENCH

F 5470-1300DV

020792 HM22/1002
MYERS BIGEL SIBLEY & SAJOVEC
PO BOX 37428
RALEIGH NC 27627

EXAMINER

PAK, M

ART UNIT	PAPER NUMBER
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1646

*12***DATE MAILED:**

10/02/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No. 09/497,822	Applicant(s) French et al.	Examiner Michael Pak	Art Unit 1646
				
<i>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i>				
Period for Reply				
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>1</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.				
<ul style="list-style-type: none"> - Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). - Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). 				
Status				
1) <input type="checkbox"/> Responsive to communication(s) filed on _____.				
2a) <input type="checkbox"/> This action is FINAL . 2b) <input checked="" type="checkbox"/> This action is non-final.				
3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11; 453 O.G. 213.				
Disposition of Claims				
4) <input checked="" type="checkbox"/> Claim(s) <u>7-14</u> is/are pending in the application.				
4a) Of the above, claim(s) _____ is/are withdrawn from consideration.				
5) <input type="checkbox"/> Claim(s) _____ is/are allowed.				
6) <input type="checkbox"/> Claim(s) _____ is/are rejected.				
7) <input type="checkbox"/> Claim(s) _____ is/are objected to.				
8) <input checked="" type="checkbox"/> Claims <u>7-14</u> are subject to restriction and/or election requirement.				
Application Papers				
9) <input type="checkbox"/> The specification is objected to by the Examiner.				
10) <input type="checkbox"/> The drawing(s) filed on _____ is/are objected to by the Examiner.				
11) <input type="checkbox"/> The proposed drawing correction filed on _____ is: a) <input type="checkbox"/> approved b) <input type="checkbox"/> disapproved.				
12) <input type="checkbox"/> The oath or declaration is objected to by the Examiner.				
Priority under 35 U.S.C. § 119				
13) <input type="checkbox"/> Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).				
a) <input type="checkbox"/> All b) <input type="checkbox"/> Some* c) <input type="checkbox"/> None of:				
1. <input type="checkbox"/> Certified copies of the priority documents have been received.				
2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____.				
3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).				
*See the attached detailed Office action for a list of the certified copies not received.				
14) <input type="checkbox"/> Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).				
Attachment(s)				
15) <input type="checkbox"/> Notice of References Cited (PTO-892) 18) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____				
16) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)				
17) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 20) <input type="checkbox"/> Other: _____				

1. The preliminary amendment filed 3 February 2000 (Paper No. 4) has been entered.

Election/Restriction

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 7-10 and 12-13, drawn to a nucleic acid, a vector, a cell, classified in Class 435, subclass 320.1.
- II. Claim 11, drawn to a protein, classified in Class 530, subclass 350.

The inventions are distinct, each from the other because of the following reasons.

The products of inventions I and II, are distinct each from the other, because they are drawn to products having materially different structures and functions.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their different classifications and recognized divergent subject matter, and the search required for any one of inventions I-II is not required for any other invention I-II, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be

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Art Unit: 1646

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examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. § 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 C.F.R. § 1.48(b) and by the fee required under 37 C.F.R. § 1.17(h).

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Pak, whose telephone number is (703) 305-7038. The examiner can normally be reached on Monday through Friday from 5:50 AM to 2:20 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yvonne Eyler, can be reached on (703) 308-6564.

Official papers filed by fax should be directed to (703) 308-4242. Faxed draft or informal communications with the examiner should be directed to (703) 308-0294.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Michael D. Pak
Michael Pak
Primary Patent Examiner
Art Unit 1646
20 September 2001